IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NO. 146 OF 2002

1. Smt. Rosa Misquita,

2. Shri Thomas Misquita,

   Both residing at
   near Panjim Post Office,
   Panjim-Goa.

3. Miss Marina J. Mendes,
   resident of House No.262,
   Malbhat, Margao-Goa.

4. Shri Francisco A. mendes,
   resident of House No.262,
   Malbhat, Margao-Goa.

5. Mrs. Magdalena J. Mendes,
   residing at near Crunet
   Factory, Malbhat,
   Margao-Goa. ... Applicants.

versus

1. Mrs. Angelina Mendes,

2. Mr. Joao Mendes,

3. Mrs. Julia Mendes,

4. Mrs. Esperanca Mendes,

5. Mr. Manuel Miranda,

   now all residing at
   "Cresent plaza, 2nd
   floor, opposite Alankar
   bldg., Malbhat, Margao,
   Goa. ... Respondents.

Mr. Rohit Bras De Sa, Advocate for the Applicants.

Mr. Sudin Usgaonkar, Advocate for the Respondnt No.1.

CORAM: P. V. HARDAS, J.

DATED: 9TH AUGUST, 2002.

ORAL JUDGMENT

By consent of parties, this Civil Revision Application is taken up for final disposal at the stage of admission.

2. This Civil Revision Application arises against an Order passed at Exh.51, dated 23rd April, 2002 by the Civil Judge, Junior Division, Margao, in Regular Civil Suit No.201/90/C, rejecting the application filed by the present Applicants/Original Plaintiffs for permission to examine the Applicant Francisco A. Mendes, one of the Plaintiffs, after the Plaintiffs have examined three witnesses. The learned Trial Court dismissed the aforesaid application filed by the Plaintiffs on the ground that the only reason which was stated in the application for permission to examine the said Francisco A. Mendes was that the Court had allowed the production of the documents and the examination of the said Francisco A. Mendes was essential to prove the documents. Apart fron this, as is observed by the learned Trial Court, no other reason has been advanced seeking permission to examine Francisco A. Mendes as P.W.1.. This application was a sequel to the objection which was taken by the

Defendants after the said Francisco A. Mendes had stepped in the witness box and nearly four pages of examination-in-chief was recorded.

3. Mr. Rohit Bras De Sa, the learned Counsel appearing for the Applicants, who has very ably argued on behalf of the Applicants, has invited my attention to a recent Judgment of the learned Single Judge of this Court in the matter of **Sanjay Narayanrao Barde and another** v. **Vimal Keshaorao Bairam and others** reported in 2000(2) Mh.L.J. 386. The learned Single Judge of this Court in this Judgment has held that Rule 3-A, Order XVIII of the Code of Civil Procedure is directory in nature. The only mandatory provision which it incorporates is to the extent of obtaining permission of the Court. In the present case, admittedly, the Plaintiffs had not obtained the permission of the Court for examining other witnesses and for examination of the Plaintiffs subsequently. The learned Trial Court had permitted the Plaintiffs to file an application and accordingly the application was considered. The learned Trial Court had not rejected the application of the Plaintiffs on the ground that no permission earlier had been sought by the Plaintiffs. The ratio of the Judgment, therefore, is not applicable to the present case. The present case revolves around, the fact that

the reason given by the Applicants was not found to be sufficient by the learned Trial Court.

4. The application filed by the Plaintiffs has been annexed to the Memo of the Revision Application and at para 10, the Plaintiffs have stated that the examination of Francisco A. Mendes as P.W.4 was essential to prove the documents. Apart from this, no other reason is given as to why the said Francisco A. Mendes could not be examined earlier and why the examination of the said Francisco A. Mendes was essential at this stage. The learned Trial Court examined the reason with due care and found that proving of the documents could be done by recalling the witnesses earlier examined. The learned Trial Court also found that apart from this solitary reason by the Plaintiffs no other reason had been advanced.

5. I have heard the learned Counsel at length and I have perused the Order of the learned Trial Court. There does not appear to be any material irregularity in the exercise of the jurisdiction by the Trial Court warranting any interference in revision. Therefore, I am not inclined to interfere with the Order of the learned Trial Court which is a reasoned Order. The Civil Revision Application is, therefore, devoid of any merit and deserves to be dismissed.

6. Civil Revision Application No.146 of 2002 is accordingly dismissed with no order as to costs.

P. V. HARDAS, J.